

United States Senate

WASHINGTON, DC 20510

November 6, 2019

Mr. Paul Saville
President and Chief Executive Officer
NVR, Inc.
11700 Plaza American Dr., Suite 500
Reston, VA 20190

Dear Mr. Saville:

We write to express our concern about NVR, Inc.'s (NVR) use of mandatory arbitration provisions in its new home construction warranties, as well as its use of non-disclosure agreements. These anti-consumer tactics attempt to shield NVR, your subsidiary Ryan Homes, and affiliated entities from accountability and scrutiny over homebuyers' complaints about negligent, faulty, or deficient home construction. We ask that you immediately remove the arbitration provisions from your agreements and stop requiring homebuyers to sign non-disclosure agreements in order to resolve disputes.

In recent articles, the Cincinnati Enquirer and Salisbury Daily Times shed light on how NVR has used mandatory arbitration provisions and non-disclosure agreements when responding to homebuyers' warranty claims about faulty or defective home construction.¹ The articles detail, for example, the ordeal the Amos family from Milford, Ohio went through after they purchased a newly-built home from Ryan Homes in 2017. Two years after they moved in, their home still has floors that are uneven, electric wiring that is not up to code, and structural issues that Ryan Home caused when its workers improperly cut floor joists in the basement. Instead of repairing its shoddy construction and fixing its mistakes, Ryan Homes demanded that the Amoses enter into binding arbitration and sign a non-disclosure agreement that would prevent them from publicly discussing their experience with Ryan Homes. The Amos family now finds itself stuck in a home that is unrepaired, that they cannot sell, and that the county found is "not approved for occupancy."

¹ James Pilcher and Liz Dufour, "What did we do to deserve this? Ohio family recounts dream home nightmare," (Oct. 31, 2019), *available at* <https://www.cincinnati.com/in-depth/news/2019/10/31/ryan-homes-ohio-family-dream-home-nightmare/3929627002/>; James Pilcher, Liz Dufour, Sara Taddeo, and Matthew Prensky, "Dream home nightmares: Ryan Homes buyers face delays, hassles as repairs lag," (Oct. 31, 2019), *available at* <https://www.cincinnati.com/in-depth/news/2019/10/31/ryan-homes-construction-building-warranty-claims/3929496002/>; (Oct. 31, 2019), *available at* <https://www.delmarvanow.com/story/news/local/maryland/2019/10/31/maryland-ryan-homes-buyers-say-builder-cost-them-thousands-repairs/4097348002/>.

This Ohio family's experience with NVR and Ryan Homes is not unique. NVR's standard warranty agreement includes a mandatory arbitration provision.² The investigative reporting by the Cincinnati Enquirer and Salisbury Daily Times indicates that NVR's general practice in Ohio, Maryland, and the other states in which it builds homes is to refuse to honor its home construction warranty and make repairs unless the homebuyer agrees to arbitrate any disputes and sign a non-disclosure agreement.³

Forcing homebuyers into arbitration and non-disclosure agreements is unfair, unjust, and abusive. It is corporate blackmail. Homebuyers should not have to give up their rights to their day in court just to ensure that they can live in a home that is safe, structurally sound, and meets minimum code requirements. Nor should homebuyers have to give up their voice to complain or discuss their experience with NVR and Ryan Homes. If NVR and Ryan Homes truly stand behind the quality of the construction of the homes they build, they would honor their warranty agreement instead of trying to lock homebuyers out of the courthouse and coerce them into silence.

Consumer Financial Protection Bureau (CFPB) data demonstrates the chilling effect of mandatory arbitration clauses. Each year roughly 32 million consumers are found to be eligible for approximately \$2.7 billion in redress through federal class action lawsuits.⁴ By contrast, during the CFPB's two-year study period, consumers were able to file only 1,060 arbitration cases with the American Arbitration Association (AAA)—the same arbitrator NVR uses—received relief in just 78 cases, and recovered less than \$400,000.⁵ AAA arbitrators awarded companies more than \$2.8 million during that time period.⁶

NVR's reliance on mandatory arbitration provisions to evade accountability is unconscionable—and it may also be illegal. The company's home construction warranties appear to be part of the documentation for the home purchase agreement.⁷ Section 1414(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 amended the Truth in Lending Act (TILA) to outlaw the use of mandatory arbitration provisions in residential mortgage loans.⁸ Pursuant to the Act, in 2013 the CFPB promulgated rules that prohibit mandatory arbitration agreements to

² See, e.g., http://www.myryanhomes.com/pdf/September_1_2018_Ryan%20Homes%20Warranty.pdf.

³ See *supra* n. 1 and Prensky, Matthew, "Ryan Homes buyers in Maryland say builder costing them thousands in repairs," (Oct. 31, 2019), *available at* <https://www.delmarvanow.com/story/news/local/maryland/2019/10/31/maryland-ryan-homes-buyers-say-builder-cost-them-thousands-repairs/4097348002/>.

⁴ Consumer Financial Protection Bureau Study Finds that Arbitration Agreements Limit Relief for Consumers," *available at* https://files.consumerfinance.gov/f/201503_cfpb_factsheet_arbitration-study.pdf.

⁵ *Id.*

⁶ *Id.*

⁷ See *supra* n. 2 at 2.

⁸ Codified at 15 U.S.C. § 1639c(e).

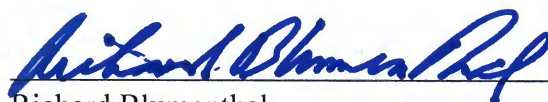
resolve “any controversy or settle any claims” arising out of a “consumer credit transaction secured by a dwelling.”⁹ We are therefore sending a copy of this letter to the CFPB to consider whether NVR’s use of a mandatory arbitration agreement in its home construction warranty agreement violates TILA.

NVR and Ryan Homes do not need to wait until the CFPB acts to do right by its customers and honor its warranty. We ask you to immediately remove and agree not to enforce arbitration provisions from NVR’s warranty agreements with homebuyers and cease the use of and agree not to enforce any non-disclosure agreements with homebuyers. We ask that you respond to this request by November 19, 2019.

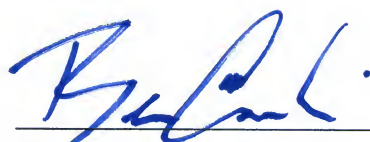
Sincerely,



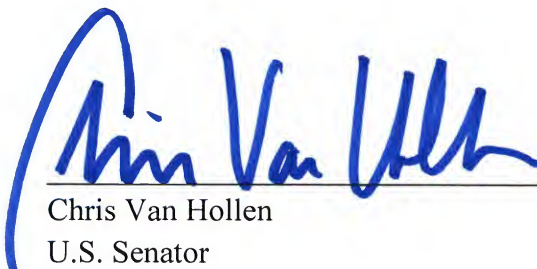
Sherrod Brown
U.S. Senator



Richard Blumenthal
U.S. Senator



Benjamin L. Cardin
U.S. Senator



Chris Van Hollen
U.S. Senator

⁹ 12 C.F.R. 1026.36(h).